



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentee : Harris *et al.*
Serial No. : 10/717,217
Filed : November 18, 2003

Art Unit : 1614
Examiner : Raymond J. Henley III
Confirm. No.: 6038

Patent No. : 7,504,376

Issued : March 17, 2009

Title : METHODS AND COMPOSITIONS FOR INCREASING THE
ANAEROBIC WORKING CAPACITY IN TISSUES

MAIL STOP OFFICE OF PETITIONS / OPLA

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
PURSUANT TO 37 CFR § 1.705(D)

Dear Sir:

Patentee hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent at time of issuance. In view of the recent decision issued by the United State District Court for the District of Columbia in Wyeth v. Dudas, No. 07-1492, 88 U.S.P.Q.2d 1538 (D.D.C. 2008), reconsideration of the Patent Term Adjustment days to increase the total PTA by 525 days from 493 days to 1,018 days respectfully is requested.

As reflected in the file history, in good faith and candor, Patentee filed a *Letter Regarding Patent Term Adjustment at Allowance Pursuant to Comment 43 of the Final Rule* on December 12, 2008, which was granted February 03, 2009, thereby adjusting and

CERTIFICATE OF MAILING BY EXPRESS MAIL 021818 7504376
"Express Mail" Mailing Label Number 0000000014046003818 7504376
Date of Deposit: May 15, 2009 200.00 DA
I hereby certify that this paper is being deposited with the United States Postal "Express Mail Post Office to Addressee" Service under 37 CFR § 1.10 on the date indicated above and is addressed to: Mail Stop Petitions, Commissioner for Patents, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

Jon Levy

Patentee : Harris *et al.*
Serial No. : 10/717,217
Filed : November 18, 2003

Attorney's Docket No.: 1000141-00155 / 1412E
Request for Reconsideration of PTA

that there is a 48 day overlap between the days accorded under §154(b)(1)(A) and §154(b)(1)(B) because the first Office Action was received 48 days after the three year time period prescribed in §154(b)(1)(B). Therefore, these overlapping 48 days have been subtracted from the total 534 PTO delay days under 35 U.S.C. §154(b)(1)(B) to yield 486 PTO delay days under §154(b)(1)(B).

In accord with the ruling set forth in Wyeth, Patentee respectfully submits that Patentee is entitled to 717 PTO delay days under 35 U.S.C. §154(b)(1)(A) and 486 PTO delay days under 35 U.S.C. §154(b)(1)(B) for a total of 1,203 PTO delay days. There were 185 APPL delay days in this application. Thus, the PTA for this patent should be:

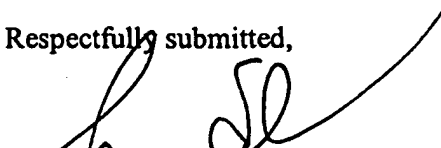
PTO delay (717 plus 486) minus APPL delay (185) = 1,018 days.

Only 493 PTO delay days were accorded this patent at allowance. Therefore, Patentee is entitled to an additional 525 days of PTA in accord with the ruling set forth in Wyeth.

In summary, and in consideration of the foregoing, Patentee respectfully requests correction of the calculation of Total PTA, under the provisions of 37 C.F.R. §1.705 and 35 U.S.C. §154 in view of Wyeth, to include the 486 PTO delay days accumulated under 35 U.S.C. §154(b)(1)(B) after January 05, 2007 (1st Office Action) until May 6, 2008 (RCE), resulting in a **Total PTA of 1,018 days** instead of the 493 days currently accorded this patent.

Patentee believes that no fee is due for the filing of this request. Any fees that may be due in connection with the filing of this paper should be charged to Deposit Account No. 02-1818.

Respectfully submitted,


Stephanie Seidman
Reg. No. 33,779

Attorney Docket No. 1000141-00155 / 1412E
Address all correspondence to: 77202
Stephanie Seidman
K & L Gates LLP
3580 Carmel Mountain Rd, Ste 200
San Diego, CA 92130-6766
Telephone: (858) 509-7410
Facsimile: (858) 509-7466
email: stephanie.seidman@klgates.com